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19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 LOS ANGELES WATERKEEPER, a  
22 California nonprofit corporation,

23 Plaintiff,

24 vs.

25 DYWIDAG SYSTEMS  
26 INTERNATIONAL, USA, INC., a  
27 New York corporation,

28 Defendant.

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

LOS ANGELES WATERKEEPER (“Waterkeeper” or “Plaintiff”), a California

1 nonprofit corporation, by and through its counsel, hereby alleges:

2 **I. JURISDICTION AND VENUE**

3 1. This is a civil suit brought under the citizen suit enforcement provisions  
4 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean  
5 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties  
6 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33  
7 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the  
8 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02  
9 (power to issue declaratory relief in case of actual controversy and further necessary  
10 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);  
11 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

12 2. On November 6, 2023, Plaintiff provided notice of Defendant’s  
13 violations of the Act, and of Plaintiff’s intention to file suit against Defendant, to the  
14 Administrator of the United States Environmental Protection Agency (“EPA”); the  
15 Administrator of EPA Region IX; the Executive Director of the State Water  
16 Resources Control Board (“State Board”); the Executive Officer of the California  
17 Regional Water Quality Control Board, Los Angeles Region (“Regional Board”); and  
18 to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct  
19 copy of Waterkeeper’s notice letter is attached as Exhibit A and is incorporated by  
20 reference.  
21

22 3. More than sixty days have passed since notice was served on Defendant  
23 and the State and federal agencies. Plaintiff is informed and believes, and thereupon  
24 alleges, that neither the EPA nor the State of California has commenced or is  
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1 diligently prosecuting a court action to redress the violations alleged in this complaint.  
2 This action's claim for civil penalties is not barred by any prior administrative penalty  
3 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).  
4

5 4. Venue is proper in the Central District of California pursuant to Section  
6 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is  
7 located within this judicial district.

## 8 **II. INTRODUCTION**

9  
10 5. This complaint seeks relief from Defendant's discharges of polluted  
11 storm water from Defendant's industrial facility located at 2154 South Street in Long  
12 Beach, California, 90805 ("Facility"). These discharges and related procedural,  
13 planning, and reporting omissions are in violation of the Act and National Pollutant  
14 Discharge Elimination System ("NPDES") Permit No. S000001, State Water  
15 Resources Control Board Water Quality Order No. 97-03-DWQ, as renewed by Water  
16 Quality Order No. 2015-0057-DWQ, and further amended on November 6, 2018  
17 ("General Permit"). Defendant's violations of the discharge, treatment technology,  
18 monitoring requirements, and other procedural and substantive requirements of the  
19 Permit and the Act are ongoing and continuous.  
20

21  
22 6. With every significant rainfall event, millions of gallons of polluted  
23 storm water originating from industrial operations, such as those conducted by  
24 Defendant, pour into storm drains and local waterways. The consensus among  
25 agencies and water quality specialists is that storm water pollution accounts for more  
26 than half of the total pollution entering surface waters each year.  
27

28 7. The Los Angeles River, Los Angeles River Estuary, and the San Pedro

1 Bay area waters are ecologically sensitive areas and are essential habitat for dozens of  
2 fish and bird species as well as macro-invertebrate and invertebrate species. Storm  
3 water and non-storm water contaminated with sediment, heavy metals, and other  
4 pollutants harm the special aesthetic and recreational significance that Los Angeles  
5 area waters have for people in the surrounding communities. The public's use of Los  
6 Angeles area waters for water contact sports exposes many people to toxic metals and  
7 other contaminants in storm water and non-storm water discharges. Non-contact  
8 recreation and aesthetic opportunities, such as wildlife observation are also impaired  
9 by polluted discharges into Los Angeles area waters.  
10  
11

12 8. The Los Angeles River, Los Angeles River Estuary, and the San Pedro  
13 Bay are impaired with, among other pollutants, trash, oil, nutrients, ammonia, copper,  
14 lead, zinc, pH, cadmium, cyanide, and sediment toxicity. Industrial facilities, like  
15 Defendant's, that are discharging polluted storm water and non-storm water contribute  
16 to the impairment of the Los Angeles River and Estuary, and San Pedro Bay and  
17 aquatic-dependent wildlife. These contaminated discharges can and must be  
18 controlled for the ecosystem to regain its health.  
19

### 20 **III. PARTIES**

21 9. Plaintiff LOS ANGELES WATERKEEPER is a nonprofit public benefit  
22 corporation organized under the laws of the State of California with its main office in  
23 Los Angeles, California. Founded in 1993, Waterkeeper is dedicated to the  
24 preservation, protection, and defense of the inland and coastal surface and groundwaters  
25 of Los Angeles County from all sources of pollution and degradation. Waterkeeper and  
26 its members are deeply concerned with protecting the environment in and around their  
27  
28

1 communities, including the Los Angeles River, Los Angeles River Estuary, and San  
2 Pedro Bay. To further these goals, Waterkeeper actively seeks federal and state agency  
3 implementation of the Act and other laws and, where necessary, directly initiates  
4 enforcement actions on behalf of itself and its members.  
5

6 10. Waterkeeper has members living in the communities near the Facility and  
7 the Los Angeles River, Los Angeles River Estuary, and San Pedro Bay. They enjoy  
8 using the Los Angeles River, Los Angeles River Estuary, and San Pedro Bay and  
9 adjacent waters for recreation and other activities. Members of Waterkeeper use and  
10 enjoy the waters into which Defendant has caused, is causing, and will continue to  
11 cause pollutants to be discharged. Members of Waterkeeper use those areas to recreate  
12 and view wildlife, among other activities. Defendant's discharges of pollutants threaten  
13 or impair each of those uses or contribute to such threats and impairments. Thus, the  
14 interests of Waterkeeper's members have been, are being, and will continue to be  
15 adversely affected by Defendant's failure to comply with the Clean Water Act and the  
16 Permit. The relief sought herein will redress the harms to Plaintiff caused by  
17 Defendant's activities.  
18

19 11. Waterkeeper brings this action on behalf of its members. Waterkeeper's  
20 interest in reducing Defendant's discharges of pollutants into the Los Angeles River,  
21 Los Angeles River Estuary, and the San Pedro Bay and requiring Defendant to  
22 comply with the requirements of the General Permit are germane to its purposes.  
23 Litigation of the claims asserted and relief requested in this Complaint does not  
24 require the participation in this lawsuit of individual members of Waterkeeper.  
25

26 12. Continuing commission of the acts and omissions alleged above will  
27  
28

1 irreparably harm Plaintiff and one or more of its members, for which harm they have no  
2 plain, speedy, or adequate remedy at law.

3 13. Defendant DYWIDAG SYSTEMS INTERNATIONAL, USA, INC.  
4 (“Dywidag” or “Defendant”) is a New York corporation that owns and/or operates the  
5 Facility located in Long Beach, California.  
6

#### 7 **IV. STATUTORY BACKGROUND**

##### 8 **A. Clean Water Act**

9 14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
10 any pollutant into waters of the United States, unless such discharge is in compliance  
11 with various enumerated sections of the Act. Among other things, Section 301(a)  
12 prohibits discharges not authorized by, or in violation of, the terms of an NPDES  
13 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.  
14

15 15. Section 402(p) of the Act establishes a framework for regulating  
16 municipal and industrial storm water discharges under the NPDES program. 33  
17 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by  
18 Section 402(p) to regulate industrial storm water discharges through individual  
19 permits issued to dischargers or through the issuance of a single, statewide general  
20 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).  
21  
22

23 16. The EPA promulgated regulations for the Section 402 NPDES permit  
24 program defining waters of the United States. *See* 40 C.F.R. § 122.2. The EPA  
25 interprets waters of the United States to include not only traditionally navigable  
26 waters but also other waters, including waters tributary to navigable waters, wetlands  
27 adjacent to navigable waters, and other waters including intermittent streams that  
28

1 could affect interstate commerce. The Act requires any person who discharges or  
2 proposes to discharge pollutants into waters of the United States to submit an NPDES  
3 permit application. 40 C.F.R. § 122.21.  
4

5 17. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator  
6 of the U.S. EPA has authorized California's State Board to issue NPDES permits  
7 including general NPDES permits in California.

8 **B. General Permit**  
9

10 18. The State Board elected to issue a statewide general permit for industrial  
11 storm water discharges ("General Permit"). The State Board originally issued the  
12 General Permit on or about November 19, 1991. The State Board modified the  
13 General Permit on or about September 17, 1992. The State Board reissued the General  
14 Permit on or about April 17, 1997, and again on or about April 1, 2014, pursuant to  
15 Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p). On November 6, 2018,  
16 the General Permit was further amended to include additional effluent limitations and  
17 numeric action levels to be applied to industrial permittees that discharge storm water  
18 to waters that have been identified as impaired pursuant to Section 303(d) of the Act,  
19 33 U.S.C. § 1313(d), including the Los Angeles River for zinc and nitrate + nitrite as  
20 nitrogen ("N+N").  
21

22 19. In order to discharge storm water lawfully in California, industrial  
23 facilities must comply with the terms of the General Permit or have obtained and  
24 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).  
25

26 20. The General Permit contains several prohibitions. Effluent Limitation  
27 V.A of the General Permit requires dischargers to reduce or prevent pollutants in their  
28

1 storm water discharges through implementation of the Best Available Technology  
2 Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the  
3 Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.  
4 General Permit, § V.A. Discharge Prohibition III.B of the General Permit prohibits the  
5 discharge of materials other than storm water (defined as non-storm water discharges  
6 or “NSWDs”) that discharge either directly or indirectly to waters of the United  
7 States. General Permit, § III.B. Receiving Water Limitation VI.C and Discharge  
8 Prohibition III.C of the General Permit prohibits storm water discharges and  
9 authorized NSWDs that cause or threaten to cause pollution, contamination, or  
10 nuisance. General Permit, §§ VI.C, III.C. Receiving Water Limitation VI.B of the  
11 General Permit prohibits storm water discharges to any surface or ground water that  
12 adversely impact human health or the environment. General Permit, § VI.B.  
13 Receiving Water Limitation VI.A and Discharge Prohibition III.D of the General  
14 Permit prohibit storm water discharges that cause or contribute to an exceedance of  
15 any applicable water quality standards contained in Statewide Water Quality Control  
16 Plan or the applicable Regional Board’s Basin Plan. General Permit, §§ VI.A, III.D

20 21. In addition to absolute prohibitions, the General Permit contains a variety  
21 of substantive and procedural requirements that dischargers must meet. Facilities  
22 discharging, or having the potential to discharge, storm water associated with  
23 industrial activity that have not obtained an individual NPDES permit must apply for  
24 coverage under the State’s General Permit by filing a Notice of Intent to Comply  
25 (“NOI”). Dischargers have been required to file NOIs since March 30, 1992.  
26

27 22. Dischargers must develop and implement a Storm Water Pollution  
28



1 Prevention Plan (“SWPPP”). The SWPPP must describe storm water control facilities  
2 and measures that comply with the BAT and BCT standards. The objective of the  
3 SWPPP requirement is to identify and evaluate sources of pollutants associated with  
4 industrial activities that may affect the quality of storm water discharges and  
5 authorized non-storm water discharges from the facility, and to implement best  
6 management practices (“BMPs”) to reduce or prevent pollutants associated with  
7 industrial activities in storm water discharges and authorized non-storm water  
8 discharges. *See* General Permit, § X.C. These BMPs must achieve compliance with  
9 the General Permit’s effluent limitations and receiving water limitations, including the  
10 BAT and BCT technology mandates. To ensure compliance with the General Permit,  
11 the SWPPP must be evaluated and revised as necessary. General Permit, § X.B.  
12 Failure to develop or implement an adequate SWPPP, or update or revise an existing  
13 SWPPP as required, is a violation of the General Permit. General Permit Fact Sheet, §  
14 I(1).

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17  
18 23. Sections X.D-I of the General Permit set forth the requirements for a  
19 SWPPP. Among other requirements, the SWPPP must include: a pollution prevention  
20 team; a site map; a list of industrial materials handled and stored at the site; a  
21 description of potential pollutant sources; an assessment of potential pollutant sources;  
22 and a description of the BMPs to be implemented at the facility that will reduce or  
23 prevent pollutants in storm water discharges and authorized non-stormwater  
24 discharges. The General Permit requires that all dischargers develop and implement a  
25 set of minimum BMPs (which are mostly non-structural BMPs) as well as any  
26 advanced BMPs (which are mostly structural) as necessary to achieve BAT/BCT,  
27  
28

1 which serve as the basis for compliance with the General Permit's technology-based  
2 effluent limitations. *See* General Permit, § X.H. The General Permit requires a  
3 comprehensive assessment of potential pollutant sources, specific BMP descriptions;  
4 and a BMP summary table identifying each identified area of industrial activity, the  
5 associated industrial pollutant sources, the industrial pollutants, and the BMPs being  
6 implemented. *See* General Permit, §§ X.G.2, 4-5. Section X.E of the General Permit  
7 requires that the SWPPP map depict, *inter alia*, all storm water discharge locations.  
8

9  
10 24. The General Permit requires dischargers to implement and maintain, to  
11 the extent feasible, all of the following minimum BMPs in order to reduce or prevent  
12 pollutants in industrial storm water discharges: good housekeeping, preventive  
13 maintenance, spill and leak prevention and response, material handling and waste  
14 management, erosion and sediment controls, an employee training program, and  
15 quality assurance and record keeping. *See* General Permit, § X.H.1. Failure to  
16 implement all of these minimum BMPs is a violation of the General Permit. *See*  
17 General Permit Fact Sheet, § I.2.o.  
18

19 25. The General Permit further requires dischargers to implement and  
20 maintain, to the extent feasible, any one or more of the following advanced BMPs  
21 necessary to reduce or prevent discharges of pollutants in industrial storm water  
22 discharges: exposure minimization BMPs, storm water containment and discharge  
23 reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* General  
24 Permit, § X.H.2. Failure to implement advanced BMPs as necessary to achieve  
25 compliance with either technology or water quality standards is a violation of the  
26 General Permit. *Id.* The General Permit also requires that the SWPPP include BMP  
27  
28

1 Descriptions and a BMP Summary Table. *See* General Permit, § X.H.4-5.

2 26. A facility must “ensure that the SWPPP identifies and justifies each  
3 minimum BMP or applicable advanced BMP not being implemented at the facility  
4 because they do not reflect best industry practice considering technological  
5 availability and economic practicability and achievability.” General Permit, §  
6 X.H.4.b. A facility’s SWPPP must also identify where the minimum BMPs in  
7 different areas of the facility will not adequately reduce the pollutants in the facility’s  
8 storm water dischargers and identify advanced BMPs for those areas. General Permit,  
9 § X.G.2. A facility’s BMPs must, at all times, be robust enough to meet the  
10 requirement of the General Permit and of 33 U.S.C. § 1342(p)(3)(A) that all  
11 discharges associated with industrial activities be subjected to BAT and BCT. General  
12 Permit, §§ V.A, I.A.1, I.D.31-32.

13 27. The General Permit requires facility operators to develop and implement  
14 an adequate Monitoring Implementation Plan for visual observations and for the  
15 sampling and analysis of storm water discharges. *See* General Permit, §§ X.I, XI. The  
16 primary objective of such monitoring is to both observe and to detect and measure the  
17 concentrations of pollutants in a facility’s discharge to ensure compliance with the  
18 General Permit’s discharge prohibitions, effluent limitations, and receiving water  
19 limitations. Adequate monitoring and reporting ensure that BMPs are effectively  
20 reducing and/or eliminating pollutants at a facility and are evaluated and revised  
21 whenever appropriate to ensure compliance with the General Permit.

22 28. Under the General Permit, facilities must analyze storm water samples  
23 for total suspended solids (“TSS”), Oil & Grease, pH, “[a]dditional parameters  
24  
25  
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28

1 identified by the Discharger on a facility-specific basis that serve as indicators of the  
2 presence of all industrial pollutants identified in the pollutant source assessment, ”  
3 “[a]dditional applicable industrial parameters related to receiving waters with 303(d)  
4 listed impairments or approved TMDLs based on the assessment in Section  
5 X.G.2.a.ix,” and additional parameters applicable based on a facility’s Standard  
6 Industrial Classification (“SIC”) code. General Permit, § XI.B.6.

8 29. Facilities are required to make monthly visual observations of storm  
9 water discharges. The visual observations must represent the quality and quantity of  
10 the facility’s storm water discharges from the storm event. General Permit, § XI.A.  
11 The General Permit requires each discharger to maintain records of all of the visual  
12 observations required by the Permit. General Permit, § XI.A.3.

14 30. Section XI.B.2 of the General Permit requires that dischargers collect and  
15 analyze storm water samples from two qualifying storm events (“QSEs”) during the  
16 first half of each reporting year (July 1 to December 31) and two QSEs during the  
17 second half of each reporting year (January 1 to June 30). Storm water discharges  
18 trigger the sampling requirement under the General Permit when they occur during  
19 facility operating hours and are preceded by 48-hours without storm water discharge.  
20 General Permit, § XI.B. A sample must be collected from each discharge point at the  
21 facility within four hours of the start of the discharge or the start of facility operations  
22 if the discharge occurs within the previous 12-hour period. General Permit, § XI.B.5.

25 31. The General Permit requires dischargers to conduct visual observations at  
26 the same time sampling occurs at a discharge location. General Permit, § XI.A.2. “The  
27 Discharger shall visually observe and record the presence or absence of floating and  
28

1 suspended materials, oil and grease, discolorations, turbidity, odors, trash/debris, and  
 2 source(s) of any discharged pollutants.” General Permit, § XI.A.2.c.

3         32. The General Permit requires operators to conduct an Annual  
 4 Comprehensive Facility Compliance Evaluation (“Annual Evaluation”) that evaluates  
 5 the effectiveness of current BMPs and the need for additional BMPs based on visual  
 6 observations and sampling and analysis results. General Permit, § XV. Per Section  
 7 XV.F of the General Permit, a facility’s Annual Evaluation must include “[a] review  
 8 and effectiveness assessment of all BMPs for each area of industrial activity and  
 9 associated potential pollutant sources to determine if the BMPs are properly designed,  
 10 implemented, and are effective in reducing and preventing pollutants in industrial  
 11 storm water discharges and authorized NSWDS.” General Permit, § XV.F. After  
 12 conducting the Annual Evaluation, “[t]he Discharger shall revise the SWPPP, as  
 13 appropriate, and implement the revisions within 90 days of the Annual Evaluation.”  
 14 General Permit, § XV. The General Permit then requires that a Discharger submit an  
 15 Annual Report which includes the date of the Annual Evaluation as well as “[a]n  
 16 identification, including page numbers and/or sections, of all revisions made to the  
 17 SWPPP within the reporting year.” General Permit § XVI.

### 18 **C. Numeric Action Levels**

19         33. The General Permit establishes annual Numeric Action Levels (“NALs”)  
 20 and instantaneous maximum NALs. The following annual NALs have been  
 21 established under the General Permit for pollutants discharged by Dywidag, including  
 22 aluminum – 0.75 mg/L; iron – 1.0 mg/L; zinc – 0.26 mg/L; and N+N – 0.68 mg/L. An  
 23 exceedance of an annual NAL occurs when the average of all samples obtained for an  
 24  
 25  
 26  
 27  
 28

1 entire facility during a single reporting year is greater than a particular annual NAL.  
2 The reporting year runs from July 1 to June 30.

3 34. The General Permit requires that a Discharger compare the results of its  
4 storm water discharge samples to the adopted annual NALs and instantaneous  
5 maximum NALs. General Permit, § XII.A. An exceedance of an annual NAL occurs  
6 when the average of the analytical results for a pollutant obtained for all samples at  
7 the entire facility during a single reporting year is greater than the pollutant's annual  
8 NAL. The reporting year runs from July 1 to June 30. An instantaneous maximum  
9 NAL exceedance occurs when two or more analytical results from samples taken for  
10 any single parameter within a reporting year exceed the instantaneous maximum NAL  
11 value (for TSS and O&G) or are outside of the instantaneous maximum NAL range  
12 (for pH).  
13

14 35. If sampling results for a given parameter indicate an NAL exceedance for  
15 that same parameter, the Discharger attains "Level 1 status," which commences on  
16 July 1 following the reporting year during which the exceedance occurred. General  
17 Permit, § XII.C. If a discharger exceeds an applicable NAL during Level 1 Status, it is  
18 then elevated to "Level 2 Status." General Permit, § XII.D. For Level 2 Status, a  
19 discharger is required to submit an Exceedance Response Action ("ERA") Action  
20 Plan and an ERA Technical Report requiring a demonstration of either additional  
21 BMPs to prevent exceedances, a determination that the exceedance is solely due to  
22 non-industrial pollutant sources, or a determination that the exceedance is solely due  
23 to the presence of the pollutant in the natural background. General Permit, § XII.D.  
24  
25

26 36. By October 1 following commencement of Level 1 status, the Discharger  
27 must complete a Level 1 Exceedance Response Action ("ERA") Evaluation. General  
28

1 Permit, § XII.C.1. As part of the Level 1 ERA Evaluation, the Discharger must  
2 “[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any  
3 additional BMPs and SWPPP revisions necessary to prevent future NAL  
4 exceedances.” *Id.* No later than January 1 following commencement of Level 1 status,  
5 the Discharger must submit via SMARTS a Level 1 ERA Report. General Permit §  
6 XII.C.2. The Level 1 ERA report must be prepared by a Qualified Industrial  
7 Stormwater Practitioner (“QISP”) and must contain “[a] summary of the Level 1 ERA  
8 Evaluation” and “[a] detailed description of the SWPPP revisions and any additional  
9 BMPs for each parameter that exceeded an NAL.” *Id.* A Discharger can move back to  
10 Baseline status from Level 1 status only when: (1) a Level 1 ERA report has been  
11 completed; (2) all identified additional BMPs have been implemented; and (3) results  
12 from four consecutive QSEs sampled after BMP implementation indicate no  
13 additional NAL exceedances for that parameter.” *Id.*

#### 14 **D. Numeric Effluent Limitations**

15 37. On November 6, 2018, the State Board amended the General Permit to  
16 include Numeric Effluent Limitations (“NELs”) for certain pollutants in certain  
17 watersheds of the State that are impaired by pollutants. Relevant to Dywidag’s  
18 discharges, the State Board adopted Instantaneous Maximum NELs of 0.159 mg/L for  
19 zinc, 8.0 mg/L for N+N, 8.0 mg/L for nitrate-nitrogen, and 1.0 mg/L for nitrite-  
20 nitrogen being discharged to the Los Angeles River watershed pursuant to the General  
21 Permit. General Permit, Attachment E, Table E-2, p. 35.

22 38. “An instantaneous maximum NEL exceedance occurs when two (2) or  
23 more analytical results from samples taken for any single parameter within a reporting  
24

1 year exceeds the instantaneous maximum NEL value.” General Permit, Attachment C,  
2 p. 5. The Los Angeles River NELs for zinc, N+N, nitrate-nitrogen, and nitrite-  
3 nitrogen went into effect on July 1, 2020.

4  
5 39. The EPA also has published benchmark levels as guidelines for  
6 determining whether a facility discharging industrial storm water has implemented the  
7 requisite best available technology economically achievable (“BAT”) and best  
8 conventional pollutant control technology (“BCT”). The following benchmarks have  
9 been established for pollutants discharged by Dywidag for industries within SIC Code  
10 3496: zinc – 0.132 mg/L (hardness of 100-124.99 mg/L); aluminum – 1.1 mg/L; and  
11 N+N – 0.68 mg/L.  
12

13 40. Compliance with the NELs is in addition to the requirements triggered by  
14 an exceedance of the NALs for the same pollutants. Amended General Permit Fact  
15 Sheet, p. 41.  
16

17 41. Upon the determination that the Facility’s storm water discharges  
18 exceeded an NEL, the General Permit mandates that the Facility do the following:

- 19 a. Conduct a facility evaluation to identify pollutant source(s) within the  
20 facility that are associated with industrial activity and whether the  
21 BMPs described in the Storm Water Pollution Prevention Plan  
22 (“SWPPP”) have been properly implemented;  
23  
24 b. Assess the facility’s SWPPP and its implementation to determine  
25 whether additional BMPs or SWPPP implementation measures are  
26 necessary to reduce or prevent pollutants in industrial storm water  
27 discharges to meet the Receiving Water Limitations (Section VI); and,  
28



1 c. Certify and submit via SMARTS documentation based upon the  
2 above facility evaluation and assessment that: i. Additional BMPs  
3 and/or SWPPP implementation measures have been identified and  
4 included in the SWPPP to meet the Receiving Water Limitations  
5 (Section VI) or applicable NELs (Attachment E); or ii. No additional  
6 BMPs or SWPPP implementation measures are required to reduce or  
7 prevent pollutants in industrial storm water discharges to meet the  
8 Receiving Water Limitations (Section VI) or applicable NELs  
9 (Attachment E).  
10  
11

12 General Permit, § XX.B.1.

13 42. The General Permit does not provide for any mixing zones by  
14 dischargers. The General Permit does not provide for any receiving water dilution  
15 credits to be applied by dischargers.  
16

17 **E. Basin Plan**

18 43. The Regional Board has identified beneficial uses and established water  
19 quality standards for the Los Angeles River, the Los Angeles River Estuary, and the  
20 San Pedro Bay, in the “Water Quality Control Plan, Los Angeles Region Basin Plan  
21 for the Coastal Watersheds of Los Angeles and Ventura Counties,” generally referred  
22 to as the Basin Plan.  
23

24 44. The beneficial uses of these waters include, among others, commercial  
25 and sport fishing, estuarine habitat, marine habitat, wildlife habitat, rare, threatened,  
26 or endangered species, migration of aquatic organisms, and spawning, reproduction,  
27 and/or early development, water contact recreation, and noncontact water  
28

1 recreation. Noncontact water recreation use is defined as “Uses of water for  
2 recreational activities involving proximity to water, but not normally involving body  
3 contact with water, where ingestion of water is reasonably possible. These uses  
4 include, but are not limited to, picnicking, sunbathing, hiking, beachcombing,  
5 camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic  
6 enjoyment in conjunction with the above activities.” Contact recreation includes  
7 swimming, wading, water-skiing, skin and scuba diving, surfing, white water  
8 activities, fishing, and uses of natural hot springs.  
9  
10

11 45. Discharges of pollutants at levels above water quality standards  
12 contribute to the impairment of beneficial uses of the waters receiving the discharge,  
13 in violation of the General Permit.

14 46. The Basin Plan includes a narrative biostimulatory substance standard  
15 which states, “Waters shall not contain biostimulatory substances in concentrations  
16 that promote aquatic growth to the extent that such growth causes nuisance or  
17 adversely affects beneficial uses.”  
18

19 47. The Basin Plan includes a narrative toxicity standard which states that  
20 “[a]ll waters shall be maintained free of toxic substances in concentrations that are  
21 toxic to, or that produce detrimental physiological responses in, human, plant, animal,  
22 or aquatic life.”  
23

24 48. The EPA has adopted freshwater numeric water quality standard for zinc  
25 of 0.120 mg/L (Criteria Maximum Concentration – “CMC”) based on a default  
26 hardness of 100 mg/L. 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).  
27

28 49. The EPA 303(d) List of Water Quality Limited Segments lists Reach 2 of

1 the Los Angeles River as impaired for trash, oil, nutrients, ammonia, copper, and lead,  
 2 among other pollutants. *See*  
 3 [https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2018state\\_ir\\_reports\\_fin](https://www.waterboards.ca.gov/water_issues/programs/tmdl/2018state_ir_reports_fin)  
 4 [al/2018\\_assessments.xlsx](#). Reach 1 of the Los Angeles River is impaired for zinc,  
 5 lead, copper, trash, pH, nutrients, ammonia, cadmium, and cyanide, among other  
 6 pollutants. The Los Angeles River Estuary is impaired for trash and sediment toxicity,  
 7 among other pollutants. San Pedro Bay is impaired for sediment toxicity, among other  
 8 pollutants.  
 9 pollutants.

#### 10 **F. CITIZEN ENFORCEMENT.**

11  
 12 50. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
 13 enforcement actions against any “person,” including individuals, corporations, or  
 14 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§ 1365(a)(1)  
 15 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33  
 16 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil  
 17 penalties of up to \$64,618 per day per violation for violations occurring after  
 18 November 2, 2015, where penalties are assessed on or after January 6, 2023, pursuant  
 19 to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R.  
 20 §§ 19.1 - 19.4.  
 21

22  
 23 51. Self-monitoring reports under the General Permit are deemed  
 24 “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union*  
 25 *Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).  
 26

#### 27 **V. STATEMENT OF FACTS**

28 52. Defendant owns and/or operates the Facility, known as Dywidag Systems

1 International, USA, Inc., that engages in the manufacturing of covered steel cable and  
2 bars consisting of steel encased in a plastic that is applied to the steel via melting the  
3 plastic and molding it to the outside of the steel.

4  
5 53. The Facility falls within Standard Industrial Classification (“SIC”) Code  
6 3496 (“Miscellaneous Fabricated Wire Products”).

7 54. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
8 has operated the Facility since prior to December 30, 2018.

9  
10 55. Plaintiff is informed and believes, and thereupon alleges, that on or about  
11 March 18, 2016, Defendant filed a Notice of Intent enrolling the Facility in the  
12 General Permit.

13 56. The Facility collects storm water from its approximately 3.5-acre  
14 industrial site and discharges storm water from at least one discharge location at the  
15 Facility. According to the Facility’s SWPPP, as amended in February 2024, a single  
16 discharge location has been identified at the Facility on the north side of the Facility’s  
17 property which discharges storm water to the City of Long Beach’s municipal  
18 separate storm sewer, which in turn drains to the Los Angeles River.

19  
20 57. Plaintiff is informed and believes, and thereupon alleges, that storm  
21 water associated with industrial activities discharges from the Facility during rain  
22 events with daily precipitation of 0.1 inches or more.

23  
24 58. Plaintiff is informed and believes, and thereupon alleges, that storm  
25 water discharged from the Facility flows into underground storm drains that empty  
26 into the Los Angeles River, Los Angeles River Estuary, and San Pedro Bay, and  
27 ultimately flows to the Pacific Ocean (collectively, “Facility Receiving Waters”).  
28

1           59. The Los Angeles River is a water of the United States. The Los Angeles  
2 River Estuary is a water of the United States. The San Pedro Bay is a water of the  
3 United States. The Pacific Ocean is a water of the United States.

4  
5           60. Plaintiff is informed and believes, and thereupon alleges, that storm  
6 water flows over the surface of the Facility where industrial activities occur, including  
7 activities associated with the manufacturing of covered steel cable and bars including  
8 grout mixing; finishing of products; cutting, grinding, welding, loading, transport, and  
9 storage.

10  
11           61. Plaintiff is informed and believes, and thereupon alleges that storm water  
12 flowing over these areas collects particulates, metals including zinc, inorganic  
13 compounds including N+N, and other pollutants as it flows towards the storm water  
14 discharge location at the Facility.

15  
16           62. Plaintiff is informed and believes, and thereupon alleges that all storm  
17 water discharges from the Facility contain storm water that is commingled with runoff  
18 from areas at the Facility where industrial processes occur.

19           63. Plaintiff is informed and believes, and thereupon alleges, that there are  
20 insufficient structural storm water control measures installed at the Facility. Plaintiff  
21 is informed and believes, and thereupon alleges, that the management practices at the  
22 Facility are currently inadequate to prevent the sources of contamination described  
23 above from causing the discharge of pollutants to waters of the United States. The  
24 Facility lacks sufficient structural controls to prevent the discharge of water once  
25 contaminated. The Facility lacks adequate storm water pollution treatment  
26 technologies to treat storm water once contaminated.  
27  
28

1           64. Since and prior to December 30, 2018, Defendant has taken samples or  
2 arranged for samples to be taken of storm water discharges at the Facility. The sample  
3 results were submitted to the State Board via SMARTS.  
4

5           65. In the storm water sampling results submitted to the State Board since  
6 December 30, 2018, the Facility has reported high pollutant levels from its storm  
7 water sampling results. Based on the Facility's storm water sampling results, Plaintiff  
8 is informed and believes, and thereupon alleges, that Defendant has discharged and  
9 continues to discharge storm water with unacceptable levels of zinc and N+N.  
10

11           **A. VIOLATIONS OF ZINC NUMERIC EFFLUENT LIMITATION**

12           66. The Facility exceeded the applicable total instantaneous maximum NEL  
13 for zinc during the 2020-2021, 2021-2022, and 2023-2024 Reporting Years. These  
14 discharges of pollutants from the Facility are evidence of violations of Effluent  
15 Limitation V.C.1 of the General Permit.  
16

17           67. During the 2020-2021 reporting year, the levels of zinc in two or more  
18 sampling results of storm water discharged from the Facility exceeded the applicable  
19 total instantaneous maximum NEL for zinc of 0.159 mg/L. On January 29, 2021, the  
20 level of zinc measured in storm water at discharge location DP#1 was 0.94 mg/L. On  
21 March 3, 2021, the level of zinc measured in storm water at discharge location DP#1  
22 was 0.19 mg/L. Each of these discharges of zinc is a separate violation of the  
23 General Permit.  
24

25           68. During the 2021-2022 reporting year, the levels of zinc in two or more  
26 sampling results of storm water discharged from the Facility exceeded the applicable  
27 total instantaneous maximum NEL for zinc of 0.159 mg/L. On October 25, 2021, the  
28

1 level of zinc measured in storm water at discharge location DP#1 was 0.85 mg/L. On  
2 December 14, 2021, the level of zinc measured in storm water at discharge location  
3 DP#1 was 0.9 mg/L. On December 23, 2021, the level of zinc measured in storm water  
4 at discharge location DP#1 was 0.47 mg/L. On March 28, 2022, the level of zinc  
5 measured in storm water at discharge location DP#1 was 2.3 mg/L. Each of these  
6 discharges of zinc is a separate violation of the General Permit.  
7

8 69. During the 2023-2024 reporting year, thus far, the levels of zinc in two or  
9 more sampling results of storm water discharged from the Facility exceeded the  
10 annual NEL for zinc of 0.159 mg/L. On November 15, 2023, the level of zinc  
11 measured in storm water at discharge location DP#1 was 0.607 mg/L. On December  
12 20, 2023, the level of zinc measured in storm water at discharge location DP#1 was  
13 0.178 mg/L. Each of these discharges of zinc is a separate violation of the General  
14 Permit.  
15

16 70. On information and belief, Petitioner alleges Defendant would have had  
17 additional NEL exceedances in 2022-2023, 2021-2022, and 2020-2021 if required  
18 sampling had occurred.  
19

20 71. On information and belief, Plaintiff alleges that Defendant has failed to  
21 comply with the General Permit requirements to evaluate and identify additional  
22 BMPs to comply with the NEL for zinc. General Permit, §§ XX.B.1; VII.E.  
23

24 72. Dywidag determined that the Facility's storm water discharges exceeded  
25 the NELs for zinc upon receipt of the March 3, 2021 report from Alpha Analytical  
26 Laboratories, Inc. setting forth the analytical results demonstrating the second  
27 exceedance of the zinc NEL during the 2020-2021 reporting year.  
28

1           73. In December 2021, and subsequently revised in August 2022 and  
2 February 2024, Dywidag prepared and submitted a Water Quality Based Corrective  
3 Action Report (“WQBCA Reports”). The WQBCA Reports purport to comply with  
4 General Permit, § XX.B.1.c.i that “[a]dditional BMPs and/or SWPPP implementation  
5 measures have been identified and included in the SWPPP to meet the Receiving  
6 Water Limitations (Section VI) or applicable NELs...” The additional BMPs  
7 identified in the WQBCA Reports were limited to increasing the maintenance of  
8 existing treatment control BMPs (downspout filters) by replacing media filters,  
9 increase vacuuming effectiveness in areas impacted by dust and particulates, and  
10 enact better containment of dust generating processes, including dust guards.  
11 Maintenance is an existing requirement for any installed BMP. Nevertheless, the 2022  
12 WQBCA Report indicates maintenance of the Facility’s downspout filters would be  
13 conducted by October 2021. The additional dust control measure included installing  
14 longer guards for grinding booth to better contain dust and particulates by December  
15 2021. Based on these BMPs, the 2022 WQBCA Report concludes that, “[a]dditional  
16 BMPs and SWPPP implementation measures are expected to reduce pollutant  
17 discharges to meet Receiving Water Limitations.”  
18  
19  
20  
21

22           74. After the date of implementing the actions identified in the 2022  
23 WQBCA Report, the zinc level reported at DP#1 during the 2021-2022 reporting year  
24 increased by more than 100%. The one sample taken during the 2022-2023 reporting  
25 year also remained in excess of the NEL concentration and exceeded the zinc NAL.  
26 The two samples thus far taken in 2023-2024 reporting year already exceed the NEL  
27 for zinc. The average of the two zinc results for the 2023-2024 reporting currently  
28



1 exceed the zinc NAL. Thus, LAW is further informed and believes that Dywidag did  
2 not have any documentation and improperly certified that the proposed changes to the  
3 SWPPP contained in the 2022 WQBCA Report would be sufficient to meet the zinc  
4 NEL.  
5

6 75. The most recent 2024 WQBCA Report fails to certify that “[a]dditional  
7 BMPs and/or SWPPP implementation measures have been identified and included in  
8 the SWPPP to meet the [the] applicable NELs.” General Permit, § XX.B.1.c.i. Instead,  
9 the 2024 WQBCA Report states that during the upcoming calendar year, “the facility  
10 is considering additional corrective actions to identify pollutant sources and  
11 improving facility BMPs including” additional mechanical sweeping, the use of an  
12 on-site filtration system, and infrastructure upgrades.” Accordingly, Dywidag has  
13 failed to conduct the required BMP evaluation and identification of additional BMPs  
14 or SWPPP implementation measures necessary to meet the zinc NEL in violation of  
15 General Permit, § XX.B.1.c.i. These violations are ongoing.  
16  
17

#### 18 **B. BAT, BCT AND RECEIVING WATER VIOLATIONS**

19 76. Since December 30, 2018, Plaintiff is informed and believes that the  
20 Facility has reported discharges of storm water containing pollutants in excess of  
21 applicable NALs for zinc and N+N. These discharges of pollutants from the Facility  
22 have violated Discharge Prohibitions III.A, III.B, III.C, and III.D and Receiving  
23 Water Limitations VI.A, VI.B, and VI.C of the General Permit and are evidence of  
24 ongoing violations of Effluent Limitation V.A of the General Permit.  
25

26 77. During the 2018-2019 reporting year, the levels of zinc in storm water  
27 detected at the Facility exceeded the annual NAL for zinc of 0.26 mg/L. On December  
28

1 6, 2018, the level of zinc measured in storm water at discharge location DP#1 was  
2 0.29 mg/L. On January 1, 2019, the level of zinc measured in storm water at discharge  
3 location DP#1 was 1.3 mg/L. The average of all zinc measurements taken at the  
4 Facility during the 2018-2019 reporting year was 0.795 mg/L, above the annual NAL  
5 for zinc.  
6

7 78. During the 2019-2020 reporting year, the level of zinc in storm water  
8 detected at the Facility exceeded the annual NAL for zinc of 0.26 mg/L. On December  
9 4, 2019, the levels of zinc measured in storm water at discharge location DP#1 was  
10 0.14 mg/L. On March 12, 2020, the level of zinc measured in storm water at discharge  
11 location DP#1 was 0.41 mg/L. The average of all zinc measurements taken at the  
12 Facility during the 2019-2020 reporting year was 0.275 mg/L, above the annual NAL  
13 for zinc.  
14

15 79. During the 2020-2021 reporting year, the levels of zinc in storm water  
16 detected at the Facility exceeded the annual NAL for zinc of 0.26 mg/L. On March 29,  
17 2021, the level of zinc measured in storm water at discharge location DP#1 was 0.94  
18 mg/L. On March 3, 2021, the level of zinc measured in storm water at discharge  
19 location DP#1 was 0.19 mg/L. The average of all zinc measurements taken at the  
20 Facility during the 2020-2021 reporting year was 0.565 mg/L, above the annual NAL  
21 for zinc.  
22

23 80. During the 2021-2022 reporting year, the levels of zinc in storm water  
24 detected at the Facility exceeded the annual NAL for zinc of 0.26 mg/L. On October  
25 25, 2021, the level of zinc measured in storm water at discharge location DP#1 was  
26 0.85 mg/L. On December 14, 2021, the level of zinc measured in storm water at  
27  
28

1 discharge location DP#1 was 0.9 mg/L. On December 23, 2021, the level of zinc  
2 measured in storm water at discharge location DP#1 was 0.47 mg/L. On March 28,  
3 2022, the level of zinc measured in storm water at discharge location DP#1 was 2.3  
4 mg/L. The average of all zinc measurements taken at the Facility during the 2021-  
5 2022 reporting year was 1.13 mg/L, above the annual NAL for zinc.  
6

7 81. During the 2022-2023 reporting year, the levels of zinc in storm water  
8 detected at the Facility exceeded the annual NAL for zinc of 0.26 mg/L. On February  
9 24, 2023, the level of zinc measured in storm water at discharge location DP#1 was  
10 0.27 mg/L. The average of all zinc measurements taken at the Facility during the  
11 2022-2023 reporting year to date was 0.27 mg/L, above the annual NAL for zinc.  
12

13 82. During the 2023-2024 reporting year, thus far, the levels of zinc in storm  
14 water detected at the Facility have exceeded the annual NAL for zinc of 0.26 mg/L.  
15 On November 15, 2023, the level of zinc measured in storm water at discharge  
16 location DP#1 was 0.607 mg/L. On December 20, 2023, the level of zinc measured in  
17 storm water at discharge location DP#1 was 0.178 mg/L. The average of all zinc  
18 measurements taken at the Facility to date during the 2023-2024 reporting year to date  
19 is 0.393 mg/L, above the annual NAL for zinc.  
20

21 83. The levels of zinc detected in storm water at the Facility have exceeded  
22 the sector-specific EPA benchmark for zinc of 0.132 mg/L.  
23

24 84. The levels of zinc detected in storm water at the Facility have exceeded  
25 the numeric water quality standard for zinc of 0.120 (CMC) mg/L established by EPA  
26 in the California Toxics Rule.  
27

28 85. During the 2020-2021 reporting year, the levels of N+N in storm water

1 detected at the Facility exceeded the annual NAL for N+N of 0.68 mg/L. On January  
2 29, 2021, the level of N+N measured in storm water at discharge location DP#1 was  
3 0.53 mg/L. On March 3, 2021, the level of N+N measured in storm water at discharge  
4 location DP#1 was 1.1 mg/L. The average of all N+N measurements taken at the  
5 Facility during the 2020-2021 reporting year was 0.815 mg/L, which is above the  
6 annual NAL for N+N.  
7

8 86. During the 2021-2022 reporting year, the levels of N+N in storm water  
9 detected at the Facility exceeded the annual NAL for N+N of 0.68 mg/L. On October  
10 25, 2021, the level of N+N measured in storm water at discharge location DP#1 was  
11 1.0 mg/L. On December 14, 2021, the level of N+N measured in storm water at  
12 discharge location DP#1 was 0.27 mg/L. On December 23, 2021, the level of N+N  
13 measured in storm water at discharge location DP#1 was 0.9 mg/L. On March 28,  
14 2022, the level of N+N measured in storm water at discharge location DP#1 was 1.4  
15 mg/L. The average of all N+N measurements taken at the Facility during the 2021-  
16 2022 reporting year was 0.893 mg/L, above the annual NAL for N+N.  
17

18 87. During the 2023-2024 reporting year, thus far, the levels of N+N in storm  
19 water detected at the Facility have exceeded the annual NAL for N+N of 0.68 mg/L.  
20 On November 15, 2023, the level of N+N measured in storm water at discharge  
21 location DP#1 was 8.1 mg/L. On December 20, 2023, the level of N+N measured in  
22 storm water at discharge location DP#1 was 6.0 mg/L. The average of all N+N  
23 measurements taken at the Facility during the 2023-2024 reporting year to date is 7.05  
24 mg/L, above the annual NAL for N+N.  
25

26 88. The levels of N+N detected in storm water at the Facility have exceeded  
27  
28

1 the sector-specific EPA benchmark for N+N of 0.68 mg/L.

2 89. On information and belief, Plaintiff alleges that since at least December  
3 30, 2018, Defendant has failed to implement BAT and BCT at the Facility for its  
4 discharges of zinc, N+N, and other potentially un-monitored pollutants. Effluent  
5 Limitation V.A of the General Permit requires that Defendant implement BAT for  
6 toxic and nonconventional pollutants and BCT for conventional pollutants by no later  
7 than October 1, 1992 or since the date the Facility opened. The General Permit further  
8 requires dischargers to implement and maintain, to the extent feasible, any one or  
9 more of the following advanced BMPs necessary to reduce or prevent discharges of  
10 pollutants in industrial storm water discharges: exposure minimization BMPs, storm  
11 water containment and discharge reduction BMPs, treatment control BMPs, and other  
12 advanced BMPs. *See* General Permit, § X.H.2. Failure to implement advanced BMPs  
13 as necessary to achieve compliance with either technology or water quality standards  
14 is a violation of the General Permit. *Id.* A Facility's BMPs must, at all times, be robust  
15 enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement  
16 that all discharges associated with industrial activities be subjected to BAT and BCT.  
17 General Permit §§ V.A, I.A.1, I.D.31-32.

18 90. Based on the pollutant levels in the Facility's storm water discharges, the  
19 BMPs implemented to date at the Facility do not represent BAT and BCT. Based on  
20 the Facility's continued exceedances of NALs, Plaintiff is informed and believes, and  
21 thereupon alleges, that Dywidag has failed to implement the necessary BMPS, despite  
22 there being advanced BMPs available, including additional treatment equipment that  
23 should have been implemented at the Facility. As of the date of this Complaint,  
24  
25  
26  
27  
28

1 Defendant has failed to implement minimum BMPs and advanced BMPs that achieve  
2 BAT and BCT.

3           91. Since at least December 30, 2018, Dywidag has been and continues to  
4 violate Section X.C.1.b of the General Permit because the Facility's SWPPP fails to  
5 identify and describe appropriate advanced BMPs. General Permit, § X.C.1.b. The  
6 SWPPP also must identify applicable advanced BMPs that are not being implemented  
7 at the Facility and provide a justification for their exclusion. *Id.*, § X.H.4.b. Given the  
8 high levels of zinc and N+N measured in the Facility's discharge, in order to comply  
9 with the General Permit's BAT/BCT requirement, the Facility's SWPPP must identify  
10 advanced BMPs necessary to implement the BAT/BCT requirements and achieve the  
11 NELs and NALs, including storm water treatment, and explain why available BATs  
12 are not being implemented at the Facility. Each of these violations has occurred every  
13 day since at least December 30, 2018 and are ongoing.

14           92. Plaintiff is informed and believes, and thereupon alleges, that during the  
15 last five rainy seasons and continuing through to the time of filing this Complaint,  
16 Defendant has discharged storm water from the Facility contaminated with zinc and  
17 N+N in excess of one or more applicable NALs, the zinc water quality standard, in  
18 violation of Effluent Limitation V.A, Discharge Prohibitions III.A, III.B, III.C, and  
19 III.D, and Receiving Water Limitations VI.A, VI.B, and VI.C of the General Permit.  
20 Plaintiff is informed and believes, and thereupon alleges, that storm water discharges  
21 containing these pollutants in violation of the General Permit have also occurred from  
22 the Facility on other rain dates listed in Attachment A of Exhibit A.

### 23 **C. MONITORING, REPORTING AND TRAINING VIOLATIONS**

1           93. From the 2018-2019 rainy season to the present, Plaintiff is informed and  
2 believes, and thereupon alleges that Defendant has taken only thirteen samples of  
3 storm water from the Facility.

4           94. Plaintiff is informed and believes, and thereupon alleges that Defendant  
5 has failed and continues to fail to collect storm water discharge samples from all  
6 QSEs as required by Section XI.B.3 of the General Permit.

7           95. Defendant failed to collect and analyze a second sample from DP#1  
8 during the first half of the 2018-2019 reporting year. Plaintiff is informed and  
9 believes and thereupon alleges that at least two QSEs occurred at the Facility during  
10 the first half of the 2018-2019 reporting year.

11           96. Defendant failed to collect and analyze a second sample from DP#1  
12 during the second half of the 2018-2019 reporting year. Plaintiff is informed and  
13 believes and thereupon alleges that at least two QSEs occurred at the Facility during  
14 the second half of the 2018-2019 reporting year.

15           97. Defendant failed to collect and analyze a second sample from DP#1  
16 during the first half of the 2019-2020 reporting year. Plaintiff is informed and  
17 believes and thereupon alleges that at least two QSEs occurred at the Facility during  
18 the second half of the 2019-2020 reporting year.

19           98. Defendant failed to collect and analyze a second sample from DP#1  
20 during the second half of the 2019-2020 reporting year. Plaintiff is informed and  
21 believes and thereupon alleges that at least two QSEs occurred at the Facility during  
22 the second half of the 2019-2020 reporting year.

1           99. Defendant failed to collect and analyze two samples from DP#1 during  
2 the first half of the 2020-2021 reporting year. Plaintiff is informed and believes and  
3 thereupon alleges that at least two QSEs occurred at the Facility during the first half  
4 of the 2020-2021 reporting year.  
5

6           100. Defendant failed to collect and analyze a second sample from DP#1  
7 during the second half of the 2021-2022 reporting year. Plaintiff is informed and  
8 believes and thereupon alleges that at least two QSEs occurred at the Facility during  
9 the second half of the 2021-2022 reporting year.  
10

11           101. Defendant failed to collect and analyze two samples from DP#1 during  
12 the first half of the 2022-2023 reporting year. Plaintiff is informed and believes and  
13 thereupon alleges that at least two QSEs occurred at the Facility during the first half  
14 of the 2022-2023 reporting year.  
15

16           102. Defendant failed to collect and analyze a second sample from DP#1  
17 during the second half of the 2022-2023 reporting year. Plaintiff is informed and  
18 believes and thereupon alleges that at least two QSEs occurred at the Facility during  
19 the second half of the 2022-2023 reporting year.  
20

21           103. As a result, Dywidag has violated Section § XI.B.2 at least 10 times in  
22 the last five years by failing to take the requisite samples from Qualifying Storm  
23 Events.

24           104. Defendant has failed to ensure employees are properly trained to  
25 implement the requirements of the General Permit. The General Permit's minimum  
26 BMPs require each discharger to maintain an Employee Training Program and  
27 mandates that "the Discharger shall ensure that all team members implementing the  
28



1 various compliance activities of this General Permit are properly trained to implement  
2 the requirements of this General Permit, including but not limited to: BMP  
3 implementation, BMP effectiveness evaluations, visual observations, and monitoring  
4 activities. General Permit, § X.H.1.f.i. In the Facility's annual report for the 2022-  
5 2023 rain year, Defendant reported that "[o]ur facility did not collect the required  
6 number of samples during the 2022-2023 year due to improper sampling technique  
7 performed by personnel. Pollution Prevention Team has been retrained on correct  
8 sampling techniques and will collect samples correctly in the future." 2022-2023  
9 Annual Report. Likewise, the 2022-2023 annual report states: "[s]ome samples were  
10 discarded due to improper sampling technique. Facility personnel has been re-trained  
11 and will sample correctly in the future." As a result, Dywidag has violated and  
12 continues to violate Section X.H.1.f.i. of the General Permit. Plaintiff is informed and  
13 believes and thereupon alleges that Defendant's failure to comply with the General  
14 Permit's training requirements are ongoing.

15  
16  
17  
18 105. In addition, since at least December 30, 2018, the Defendant's SWPPP  
19 fails to identify procedures for alternate team members in violation of the General  
20 Permit. General Permit, § X.D.1.c. The 2021 SWPPP states that "DSI has a process of  
21 training and assigning multiple individuals to perform SWPP roles whenever needed.  
22 Also, individuals assigned to replace these team members during an absence will  
23 fulfill the SWPP Team Responsibilities as part of the assignment." 2024 SWPPP, p. 2.  
24 Such statement is insufficient because the SWPPP does not detail procedures that  
25 would assure the availability of qualified team members, such as during qualifying  
26 rain events. General Permit, § X.D.1.c.  
27  
28

106. Information available to Plaintiff indicates that as a result of these practices, storm water containing excessive pollutants is being discharged from the Facility during rain events into underground storm drains at the Facility that empty into the Los Angeles River, which flows into the Los Angeles River Estuary and San Pedro Bay, and ultimately the Pacific Ocean.

107. Plaintiff is informed and believes, and thereupon alleges, that Defendant has failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent with the General Permit. Information available to Plaintiff indicates that Defendant has not fulfilled the requirements set forth in the General Permit for discharges from the Facility due to the continued discharge of contaminated storm water. Plaintiff is informed and believes, and thereupon alleges, that all of the violations alleged in this Complaint are ongoing and continuous.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

#### **Discharges of Contaminated Storm Water in Violation of Numeric Effluent Limitations. (33 U.S.C. §§ 1311, 1342)**

108. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

109. Defendant has discharged storm water from the Facility, as set forth above, in violation of Effluent Limitation V.C set forth in the General Permit.

110. Once the Facility obtained two (2) or more analytical results from samples taken for zinc within a reporting year that exceeded the instantaneous maximum NEL value, each exceedance is a separate and distinct violation of Effluent

1 Limitation V.C of the General Permit.

2 111. Defendant's violations will continue each day it discharges levels of zinc  
3 in violation of the NEL for zinc.

4 112. Each and every violation of Effluent Limitation V.C of the General  
5 Permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §  
6 1311(a).

7  
8 **SECOND CAUSE OF ACTION**  
9 **Failure to Implement the Best Available and**  
10 **Best Conventional Treatment Technologies**  
11 **(Violation of Permit Conditions and the Act 33 U.S.C. §§ 1311, 1342)**

12 113. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
13 fully set forth herein.

14 114. The General Permit's SWPPP requirements and Effluent Limitation V.A  
15 require dischargers to reduce or prevent pollutants in their storm water discharges  
16 through implementation of BAT for toxic and nonconventional pollutants and BCT  
17 for conventional pollutants. Defendant has failed to implement advanced BMPs, and  
18 BAT and BCT at the Facility for their discharges of zinc and N+N in violation of  
19 Effluent Limitations V.A and X.H of the General Permit.

20 115. Each day since December 30, 2018, that Defendant has failed to develop  
21 and implement advanced BMPs and BAT/ BCT in violation of the General Permit is a  
22 separate and distinct violation of the General Permit and Section 301(a) of the Act, 33  
23 U.S.C. § 1311(a).

24 116. Defendant has been in violation of the BMP and BAT/BCT requirements  
25 every day since at least December 30, 2018. Defendant continues to be in violation of  
26  
27  
28

1 the BAT/BCT requirements each day that it fails to develop and fully implement  
2 BAT/BCT at the Facility.

3  
4 **THIRD CAUSE OF ACTION**

5 **Failure to Perform Water Quality-Based Corrective Actions**  
6 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 117. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
8 fully set forth herein.

9 118. Defendant is required to perform certain actions when it determines that  
10 its industrial storm water discharges are in violation of Receiving Water Limitations  
11 or when its discharges exceed an NEL.

12 119. As of March 3, 2021, Defendant was required to prepare and submit a  
13 Water Quality Based Corrective Action Report addressing the Facility's violations of  
14 the zinc NEL. The Water Quality Based Corrective Action Report was required to  
15 certify either that "[a]dditional BMPs and/or SWPPP implementation measures have  
16 been identified and included in the SWPPP to meet the ... applicable NELs" or that  
17 no additional measures were needed to meet the NELs.  
18

19 120. In each of its past WQBCA Reports submitted to address the Facility's  
20 violations of the zinc NEL, Defendant either did not have the requisite documentation  
21 to certify that proposed changes to the SWPPP contained in its WQBCA Report  
22 would be sufficient to meet the zinc NEL or Defendant failed to certify that it had  
23 identified additional BMPs or SWPPP implementation measures necessary to meet the  
24 zinc NEL.  
25

26 121. Every day since March 3, 2021, Defendant has failed to properly identify  
27  
28

1 and implement the required water quality-based corrective actions in violation of  
 2 Sections XX.B.1 and VII.E of the General Permit and Section 301(a) of the Clean  
 3 Water Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of these  
 4 requirements each day that it fails to complete the required actions.  
 5

#### 6 **FOURTH CAUSE OF ACTION**

##### 7 **Discharges of Pollutants in Excess of Receiving Water Limits** 8 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

9 122. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
 10 fully set forth herein.

11 123. Receiving Water Limitation VI.C and Discharge Prohibition III.C of the  
 12 General Permit prohibits storm water discharges and authorized non-storm water  
 13 discharges that cause or threaten to cause pollution, contamination, or nuisance.  
 14 Receiving Water Limitation VI.B of the General Permit prohibits storm water  
 15 discharges to any surface or ground water that adversely impacts human health or the  
 16 environment. Receiving Water Limitation VI.A and Discharge Prohibition III.D of the  
 17 General Permit prohibit storm water discharges that cause or contribute to an  
 18 exceedance of any applicable water quality standards contained in Statewide Water  
 19 Quality Control Plan or the applicable Regional Board's Basin Plan.  
 20  
 21

22 124. Plaintiff is informed and believes, and thereupon alleges, that since at least  
 23 December 30, 2018, Defendant has been discharging polluted storm water from the  
 24 Facility in excess of the applicable water quality standards for zinc and N+N in  
 25 violation of Receiving Water Limitations VI.A, VI.B, and VI.C, and Discharge  
 26 Prohibition III.C and III.D of the General Permit.  
 27  
 28

1           125. During every rain event, storm water flows freely over exposed materials,  
2 waste products, and other accumulated pollutants at the Facility, becoming  
3 contaminated with zinc, N+N, and other potentially un-monitored pollutants at levels  
4 above applicable water quality standards. The storm water from the Facility flows  
5 untreated into storm drains at the Facility. Plaintiff is informed and believes, and  
6 thereupon alleges, that storm water from the Facility flows through underground  
7 storm drains into the Los Angeles River, Los Angeles River Estuary, and San Pedro  
8 Bay, which then ultimately flows to the Pacific Ocean.  
9  
10

11           126. Plaintiff is informed and believes, and thereupon alleges, that these  
12 discharges of contaminated storm water are causing or contributing to the violation of  
13 the applicable water quality standards in a Statewide Water Quality Control Plan and/or  
14 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation  
15 VI.A and Discharge Prohibition III.D of the General Permit.  
16

17           127. Plaintiff is informed and believes, and thereupon alleges, that these  
18 discharges of contaminated storm water cause or threaten to cause pollution,  
19 contamination, or nuisance in violation of Receiving Water Limitation VI.C and  
20 Discharge Prohibition III.C of the General Permit.  
21

22           128. Plaintiff is informed and believes, and thereupon alleges, that these  
23 discharges of contaminated storm water are adversely affecting human health and the  
24 environment in violation of Receiving Water Limitations VI.B of the General Permit.  
25

26           129. Plaintiff is informed and believes, and thereupon alleges, that  
27 unauthorized non-stormwater discharges have been occurring at the Facility as a result  
28 of inadequate BMPs to prevent non-storm water discharges.

1           130. Every day since at least December 30, 2018 that Defendant has  
 2 discharged and continues to discharge polluted storm water from the Facility in  
 3 violation of the General Permit is a separate and distinct violation of Section 301(a) of  
 4 the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.  
 5

6                                   **FIFTH CAUSE OF ACTION**  
 7                                   **Failure to Develop and Implement an**  
 8                                   **Adequate Monitoring Implementation Plan**  
 9                                   **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10           131. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if  
 11 fully set forth herein.

12           132. The General Permit requires dischargers of storm water associated with  
 13 industrial activity to have developed and be implementing a monitoring and reporting  
 14 program (including, inter alia, sampling and analysis of discharges).  
 15

16           133. Defendant has failed to develop and implement an adequate Monitoring  
 17 Implementation Plan for the Facility. General Permit, §§ X(I), XI, and §X.H.1.f.i.  
 18 Defendant's ongoing failure to develop and implement an adequate Monitoring  
 19 Implementation Plan for the Facility is evidenced by Defendant's failure to conduct  
 20 required sampling, analysis, and proper employee training.  
 21

22           134. Since the 2018-2019 reporting year, Defendant has failed to collect and  
 23 analyze storm water samples from two QSEs within the first half of each reporting  
 24 year and two QSEs within the second half of each reporting year. General Permit, §  
 25 XI.B.2.

26           135. Since at least December 30, 2018, Defendant has failed to collect and  
 27 analyze samples from requisite QSEs on at least 10 occasions.  
 28

136. Each day since at least December 30, 2018, that Defendant has failed to develop and implement an adequate Monitoring Implementation Plan for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Each day since at least December 30, 2018, that Defendant has failed to collect and analyze a storm water sample for at least two QSEs for each half of a reporting year is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

#### **SIXTH CAUSE OF ACTION**

#### **Failure to Prepare, Implement, Review, and Update an Adequate Storm Water Pollution Prevention Plan (Violation of Permit Conditions and the Act 33 U.S.C. §§ 1311, 1342)**

137. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

138. Section X of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP.

139. Defendant has failed to develop and implement an adequate SWPPP for the Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, inter alia, Defendant's failure to identify and describe advanced BMPs at the Facility.

140. Defendant has failed to update the SWPPP for the Facility in response to the analytical results of the Facility's storm water monitoring as required by Sections XV and XVI of the General Permit.



141. Each day since December 30, 2018, that Defendant has failed to develop, implement, and update an adequate SWPPP for the Facility, respectively, is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

142. Defendant has been in violation of the Permit's SWPPP requirements every day since December 30, 2018. Defendant continues to be in violation of the SWPPP requirements each day that it fails to develop and fully implement an adequate SWPPP for the Facility.

#### **SEVENTH CAUSE OF ACTION**

##### **Failure to Ensure Employees are Properly Trained (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

143. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

144. The General Permit's minimum BMPs requires each discharger to maintain an Employee Training Program.

145. Plaintiff is informed and believes, and thereupon alleges, that during the 2022-2023 rain year, Defendant failed to maintain such program in violation of Section X.H.1.f.i. of the General Permit.

146. Defendant has been in violation of the Permit's training requirements every day since at least December 30, 2018. Defendant continues to be in violation of the training requirements each day that it fails to develop and fully implement an adequate training program for the Facility.

#### **VII. RELIEF REQUESTED**

1           Wherefore, Plaintiff respectfully requests that this Court grant the following  
2 relief:

3                   a. Declare Defendant to have violated and to be in violation of the Act as  
4 alleged herein;

5                   b. Enjoin Defendant from discharging polluted storm water from the  
6 Facility unless authorized by the General Permit;

7                   c. Enjoin Defendant from further violating the substantive and procedural  
8 requirements of the General Permit;

9                   d. Order Defendant to immediately implement storm water pollution  
10 control and treatment technologies and measures that are equivalent to BAT or BCT;

11                   e. Order Defendant to immediately implement storm water pollution  
12 control and treatment technologies and measures that prevent pollutants in the Facility's  
13 storm water from contributing to violations of any water quality standards;

14                   f. Order Defendant to ensure employees are properly trained and that  
15 proper training procedures and techniques are in place pursuant to the General Permit.

16                   g. Order Defendant to prepare a SWPPP for the Facility consistent with  
17 the General Permit's requirements and implement procedures to regularly review and  
18 update the SWPPP;

19                   h. Order Defendant to provide Plaintiff with reports documenting the  
20 quality and quantity of their discharges to waters of the United States and their efforts  
21 to comply with the Act and the Court's orders;

22                   i. Order Defendant to pay civil penalties of up to \$64,618 per day per  
23 violation;

1 j. Order Defendant to take appropriate actions to restore the quality of  
2 waters impaired or adversely affected by their activities;

3 k. Award Plaintiff's costs (including reasonable investigative, attorney,  
4 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.  
5 § 1365(d); and,  
6

7 l. Award any such other and further relief as this Court may deem  
8 appropriate.

9 Dated: February 28, 2024 Respectfully submitted,  
10

11 By: /s/ Michael R. Lozeau  
12 Michael R. Lozeau  
13 LOZEAU DRURY LLP  
14 Attorneys for Los Angeles Waterkeeper  
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